

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**UNITED STATES OF AMERICA**

**VS.**

**EDWIN K. THOMAS**

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§

**NO. 1:98-cr-00246-SS**

**REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE SAM SPARKS  
SENIOR UNITED STATES DISTRICT JUDGE**

The undersigned submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b), 18 U.S.C. § 3401(i), and Rule 1(d) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

**I. PROCEDURAL BACKGROUND**

On April 9, 1999, Edwin K. Thomas was sentenced to 84 months imprisonment followed by a three-year term of supervised release for possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1).

In a First Amended Petition for Warrant or Summons for Offender under Supervision dated February 24, 2016 (Dkt. No. 28), the Probation Office alleged that Mr. Thomas violated a special condition of his supervision requiring him to participate in drug addiction treatment and testing by failing to submit monthly drug tests and participate in counseling sessions. The petition further alleged that Mr. Thomas violated a standard condition of his supervision by failing to report to his Probation Officer for eight months in 2015. Finally, the petition alleged that Mr. Thomas violated

three additional standard conditions of his supervision (not to commit another crime, illegally possess a controlled substance, or associate with a convicted felon) by his actions on November 18, 2015, when he was found in possession of controlled substances while driving with a passenger who is a convicted felon.

U.S. District Judge Sam Sparks authorized the issuance of a warrant on February 24, 2016. Mr. Thomas was convicted of Possession of Marijuana and Possession of a Controlled Substance on December 14, 2016, and released from state prison to the federal detainer on February 18, 2020. A final revocation hearing was set before the undersigned on March 23, 2020.

## **II. ANALYSIS**

Federal Rule of Criminal Procedure 32.1(c) provides that a hearing is not required in a revocation proceeding if (A) the person waives the hearing; or (B) the relief sought is favorable to the person and does not extend the term of supervised release; and (C) an attorney for the government has received notice of the relief sought, has had reasonable opportunity to object, and has not done so.

On March 22, 2020, the parties submitted an Agreed Recommended Disposition in Final Revocation Proceeding and Waiver of Defendant's Appearance and Waiver of Hearing ("Agreed Recommended Disposition") (Dkt. No. 42). That agreed filing states in part:

The parties have conferred in this case and agreed that an appropriate resolution of this matter would be to accept Mr. Thomas's plea of true to the alleged violations, revoke Mr. Thomas's term of supervised release, sentence Mr. Thomas to a period of incarceration of ninety (90) days, and find that no supervised release should follow. This disposition is favorable to Mr. Thomas and the Government does not object to it.

The filing further states that Mr. Thomas's counsel has fully advised Mr. Thomas of his right to a hearing, to the disclosure of the evidence against him and all of the rights relating to sentencing and allocution, and that, understanding those rights, he wishes to waive all of them and waive any hearing in this case, and make a plea of "True" to the petition.

### **III. FINDINGS OF THE COURT**

Based on the parties' agreement and the Agreed Recommended Disposition, as well as Mr. Thomas's plea of "True," the Court finds that Mr. Thomas violated conditions of his supervised release by committing a new offense, failing to submit monthly drug tests and participate in counseling sessions, failing to report to his Probation Officer, illegally possessing controlled substances, and associating with a convicted felon.

### **IV. RECOMMENDATIONS**

Based on the agreement of the Government and the Defendant, the Court **RECOMMENDS** that Mr. Thomas's supervised release be **REVOKED** and that the Mr. Thomas be sentenced to 90 days incarceration with no supervised release to follow.

### **V. OBJECTIONS**

Because this is an agreed disposition, there will be no objections to this Report and Recommendation, and the matter is ripe for the District Court to act upon it.

**SIGNED** on March 23, 2020.



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SUSAN HIGHTOWER  
UNITED STATES MAGISTRATE JUDGE